

60th Legislature

HOUSE BILL NO. 91

INTRODUCED BY E. CLARK

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS CONCERNING CHILD ABUSE AND NEGLECT TO COMPLY WITH FEDERAL LAW ALLOWING AUDIO AND VIDEO TESTIMONY; CLARIFYING REQUIREMENTS CONCERNING NOTICE BY HEALTH PROFESSIONALS OF DRUG-AFFECTED INFANTS; AMENDING SECTIONS 41-3-115, 41-3-201, 41-3-205, 41-3-422, 41-3-423, AND 41-3-432, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION Section 1. Audio or video testimony allowed. A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

Section 2. Section 41-3-115, MCA, is amended to read:

"41-3-115. Foster care review committee -- foster care reviews -- permanency hearings. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

1 (iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who
2 is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that
3 review.

4 (c) Members may also include but are not limited to:

5 (i) a representative of the youth court;

6 (ii) a representative of a local school district;

7 (iii) a public health nurse;

8 (iv) an at-large community member with knowledge of child protective services.

9 (3) (a) When a child is in foster care under the supervision of the department or if payment for care is
10 made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review
11 must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C.
12 675(5).

13 (b) The committee shall hear the case of each child in foster care to review issues that are germane to
14 the goals of permanency and to accessing appropriate services for parents and children. In evaluating the
15 accessibility, availability, and appropriateness of services, the committee shall consider:

16 (i) the safety, history, and specific needs of the child;

17 (ii) whether an involved agency has selected services specifically relevant to the problems and needs
18 of the child and family;

19 (iii) whether appropriate services have been available to the child and family on a timely basis; and

20 (iv) the results of intervention.

21 (c) If the department has placed a child in foster care in another state, the committee shall consider
22 whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be
23 returned to the parent, the committee shall consider both in-state and out-of-state placement options.

24 (c)(d) The committee may hear the case of a child who remains in or returns to the child's home and for
25 whom the department retains legal custody.

26 (4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the
27 following:

28 (i) the parents of the child or their attorneys;

29 (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate
30 parents;

1 (iii) the child who is the subject of the review if the child is 12 years of age or older;

2 (iv) the child's attorney, if any;

3 (v) the guardian ad litem;

4 (vi) the court-appointed attorney or special advocate of the child; and

5 (vii) the child's Indian tribe if the child is an Indian.

6 (b) When applicable, notice of each review may be sent to other interested persons who are authorized
7 by the committee to receive notice.

8 (c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

9 (d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings
10 must be provided.

11 (e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to
12 the attorney who initiated the child abuse or neglect proceedings.

13 (5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and
14 recommendations made by the committee must be specific to each child.

15 (6) After reviewing each case, the committee shall prepare written findings and recommendations with
16 respect to:

17 (a) the continuing need for the placement and the appropriateness and safety of the placement;

18 (b) compliance with the case plan;

19 (c) the progress that has been made toward alleviating the need for placement;

20 (d) a likely date by which the child may be returned home or by which a permanent placement may be
21 finalized.

22 (7) Following the permanency hearing, the committee shall send copies of its minutes and written
23 findings and recommendations to the court and to the parties. If a party objects to the findings and
24 recommendations, the party may within 10 days serve written objections upon the other party and file them with
25 the court. A request for a hearing before the court upon the objections may be made by a party by motion. The
26 court, after hearing the objections or upon its own motion and without objection, may adopt the findings and
27 recommendations and shall issue an appropriate order.

28 (8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and
29 information on individuals' cases shared by committee members are confidential and subject to the confidentiality
30 requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioners and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy;

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A health professional listed in subsection (2) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

~~(3)~~**(4)** Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

~~(4)~~**(5)** (a) Except as provided in subsection ~~(4)~~**(b)** ~~(5)~~**(b)** or ~~(4)~~**(c)** ~~(5)~~**(c)**, a person listed in subsection (2)

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1 may not refuse to make a report as required in this section on the grounds of a physician-patient or similar
2 privilege.

3 (b) A member of the clergy or a priest is not required to make a report under this section if:

4 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the
5 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

6 (ii) the statement was intended to be a part of a confidential communication between the member of the
7 clergy or the priest and a member of the church or congregation; and

8 (iii) the person who made the statement or confession does not consent to the disclosure by the member
9 of the clergy or the priest.

10 (c) A member of the clergy or a priest is not required to make a report under this section if the
11 communication is required to be confidential by canon law, church doctrine, or established church practice.

12 ~~(5)~~(6) The reports referred to under this section must contain:

13 (a) the names and addresses of the child and the child's parents or other persons responsible for the
14 child's care;

15 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any
16 evidence of previous injuries;

17 (c) any other information that the maker of the report believes might be helpful in establishing the cause
18 of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or
19 neglect; and

20 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
21 neglect, within the meaning of this chapter."

22

23 **Section 4.** Section 41-3-205, MCA, is amended to read:

24 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
25 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
26 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
27 as provided by this section. Except as provided in subsections ~~(6)~~ (7) and ~~(7)~~ (8), a person who purposely or
28 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
29 misdemeanor.

30 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The

1 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
2 it.

3 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
4 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
5 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
6 following persons or entities in this state and any other state or country:

7 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
8 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
9 otherwise meets the disclosure criteria contained in this section;

10 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
11 or child who is the subject of a report in the records or to a person authorized by the department to receive
12 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
13 placement;

14 (c) a health or mental health professional who is treating the family or child who is the subject of a report
15 in the records;

16 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
17 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
18 person who reported or provided information on the alleged child abuse or neglect incident contained in the
19 records;

20 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
21 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
22 court to represent a child in a pending case;

23 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

24 (g) approved foster and adoptive parents who are or may be providing care for a child;

25 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
26 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
27 safety may be endangered;

28 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
29 an alleged perpetrator of child abuse or neglect;

30 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and

- 1 that is authorized by the department to conduct the research or evaluation;
- 2 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
- 3 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
- 4 treatment plan, and monitoring the plan;
- 5 (l) the coroner or medical examiner when determining the cause of death of a child;
- 6 (m) a child fatality review team recognized by the department;
- 7 (n) a department or agency investigating an applicant for a license or registration that is required to
- 8 operate a youth care facility, day-care facility, or child-placing agency;
- 9 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
- 10 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
- 11 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
- 12 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
- 13 persons with developmental disabilities, or older persons posed by the person about whom the information is
- 14 sought, as determined by the department.
- 15 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
- 16 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
- 17 privacy rights of the child or the child's parent or guardian, as determined by the department;
- 18 (q) an employee of the department or other state agency if disclosure of the records is necessary for
- 19 administration of programs designed to benefit the child;
- 20 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
- 21 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;
- 22 (s) a youth probation officer who is working in an official capacity with the child who is the subject of a
- 23 report in the records;
- 24 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
- 25 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;
- 26 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
- 27 board established under Title 41, chapter 3, part 10;
- 28 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
- 29 officer, as provided in 41-3-202;
- 30 (w) a member of a county interdisciplinary child information team formed under the provisions of

1 52-2-211;

2 (x) members of a local interagency staffing group provided for in 52-2-203;

3 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

4 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
5 to receive the information with respect to a student of the district who is a client of the department.

6 (4) A school or school district may disclose, without consent, personally identifiable information from the
7 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,
8 guardian ad litem, or special advocate.

9 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
10 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
11 provisions of the law.

12 (6) The confidentiality provisions of this section must be construed to allow a court of this state to share
13 information with other courts of this state or of another state when necessary to expedite the interstate placement
14 of children.

15 ~~(6)~~(7) A person who is authorized to receive records under this section shall maintain the confidentiality
16 of the records and may not disclose information in the records to anyone other than the persons described in
17 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
18 proceedings confidential.

19 ~~(7)~~(8) A news organization or its employee, including a freelance writer or reporter, is not liable for
20 reporting facts or statements made by an immediate family member under subsection ~~(6)~~ (7) if the news
21 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
22 proceeding.

23 ~~(8)~~(9) This section is not intended to affect the confidentiality of criminal court records, records of law
24 enforcement agencies, or medical records covered by state or federal disclosure limitations.

25 ~~(9)~~(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
26 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
27 without cost."

28

29 **Section 5. Section 41-3-422, MCA, is amended to read:**

30 **"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter**

1 must be initiated by the filing of a petition. A petition may request the following relief:

- 2 (i) immediate protection and emergency protective services, as provided in 41-3-427;
3 (ii) temporary investigative authority, as provided in 41-3-433;
4 (iii) temporary legal custody, as provided in 41-3-442;
5 (iv) long-term custody, as provided in 41-3-445;
6 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
7 (vi) appointment of a guardian pursuant to 41-3-444;
8 (vii) a determination that preservation or reunification services need not be provided; or
9 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
10 may be required for the best interests of the child.

11 (b) The petition may be modified for different relief at any time within the discretion of the court.

12 (c) A petition for temporary legal custody may be the initial petition filed in a case.

13 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
14 a case if a request for a determination that preservation or reunification services need not be provided is made
15 in the petition.

16 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under
17 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
18 accompanied by:

19 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
20 stating the basis for the petition; and

21 (b) a separate notice to the court stating any statutory time deadline for a hearing.

22 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

23 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
24 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
25 Proceedings under a petition are not a bar to criminal prosecution.

26 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
27 burden of presenting evidence required to justify the relief requested and establishing:

28 (i) probable cause for the issuance of an order for immediate protection and emergency protective
29 services or an order for temporary investigative authority;

30 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

1 (iii) a preponderance of the evidence for an order of long-term custody; or

2 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

3 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
4 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child
5 Welfare Act apply.

6 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
7 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state,
8 must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal
9 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,
10 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

11 (b) Copies of all other petitions must be served upon the person or the person's attorney of record by
12 certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified
13 mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the
14 service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the
15 person to whom the notice was mailed appears at the hearing.

16 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
17 having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as
18 provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of
19 justice require.

20 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and
21 if there is no guardian, the court shall appoint one.

22 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
23 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of
24 all judicial hearings for the child and ~~must be given an opportunity~~ has the right to be heard. The right to appear
25 or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative
26 caring for the child must be given notice of all reviews by the reviewing body.

27 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
28 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
29 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
30 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best

1 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
2 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
3 pursuant to this chapter involving the custody of the child.

4 (10) An abuse and neglect petition must:

5 (a) state the nature of the alleged abuse or neglect and of the relief requested;

6 (b) state the full name, age, and address of the child and the name and address of the child's parents
7 or guardian or person having legal custody of the child;

8 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
9 to the action.

10 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

11 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
12 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
13 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group
14 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
15 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
16 is a party to the original proceeding, a representative of the department who has complete authority to settle the
17 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

18 (13) Service of a petition under this section must be accompanied by a written notice advising the child's
19 parent, guardian, or other person having physical or legal custody of the child of the:

20 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if
21 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

22 (b) right to contest the allegations in the petition; and

23 (c) timelines for hearings and determinations required under this chapter.

24 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's
25 parent, guardian, or other person having physical or legal custody of the child that:

26 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
27 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
28 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

29 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of
30 parental rights is in the best interests of the child and the state is required to file a petition to terminate parental

1 rights; and

2 (c) completion of a treatment plan does not guarantee the return of a child.

3 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
4 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
5 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
6 in the area of child abuse and neglect laws."

7

8 **Section 6.** Section 41-3-423, MCA, is amended to read:

9 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
10 **findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of
11 removal of a child from the child's home and to reunify families that have been separated by the state.
12 Reasonable efforts include but are not limited to voluntary protective services agreements, development of
13 individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting
14 possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely
15 progress toward reunification or permanent placement. In determining preservation or reunification services to
16 be provided and in making reasonable efforts at providing preservation or reunification services, the child's health
17 and safety are of paramount concern.

18 (2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any
19 time during an abuse and neglect proceeding, make a request for a determination that preservation or
20 reunification services need not be provided. If an indigent parent is not already represented by counsel, the court
21 shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in
22 accordance with the provisions of 41-3-425. A court may make a finding that the department need not make
23 reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

24 (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture,
25 chronic abuse, or sexual abuse or chronic, severe neglect of a child;

26 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
27 homicide of a child;

28 (c) committed aggravated assault against a child;

29 (d) committed neglect of a child that resulted in serious bodily injury or death; or

30 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the

1 circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care
2 for the child at issue.

3 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201,
4 if the court makes a finding that the putative father has failed to do any of the following:

5 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

6 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

7 (i) visiting the child at least monthly when physically and financially able to do so; or

8 (ii) having regular contact with the child or with the person or agency having the care and custody of the
9 child when physically and financially able to do so; and

10 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child
11 was not in the physical custody of the other parent.

12 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has
13 not been:

14 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

15 (ii) recorded on the child's birth certificate as the child's father.

16 (4) A judicial finding that preservation or reunification services are not necessary under this section must
17 be supported by clear and convincing evidence.

18 (5) If the court finds that preservation or reunification services are not necessary pursuant to subsection
19 (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts,
20 including consideration of both in-state and out-of-state permanent placement options for the child, must be made
21 to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps
22 are necessary to finalize the permanent placement of the child.

23 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child
24 to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
25 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner
26 in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete
27 whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a
28 child permanently for adoption or to make an alternative out-of-home permanent placement may be made
29 concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying
30 in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 7. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425. ~~The court may permit testimony by telephone, audiovisual means, or other electronic means.~~

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of

1 the federal Indian Child Welfare Act, if applicable, have been met.

2 (5) The court shall make written findings on issues including but not limited to the following:

3 (a) whether the child should be returned home immediately if there has been an emergency removal or
4 remain in temporary out-of-home care or be removed from the home;

5 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home
6 would be contrary to the child's best interests and welfare;

7 (c) whether the department has made reasonable efforts to avoid protective placement of the child or
8 to make it possible to safely return the child to the child's home;

9 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or
10 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
11 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

12 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

13 (6) The court may consider:

14 (a) terms and conditions for parental visitation; and

15 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
16 needed.

17 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend
18 a previous order for immediate protection of the child if one has been entered. The order must be in writing.

19 (8) If a child who has been removed from the child's home is not returned home after the show cause
20 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
21 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
22 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
23 to the district court, as provided in 41-3-1010.

24 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the
25 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must
26 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties
27 pursuant to 41-3-434 and order of the court."

28

29 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
30 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

1

2

NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2007.

3

- END -

Amendment to House Bill No. 91
1st Reading Comp

Requested by Representative Edith Clark

For the House Judiciary Committee

Prepared by Shirley K. Brown
January 11, 2007

1. Page 1, line 8.
Following: "41-3-432,"
Insert: "41-3-445,"

2. Page 15
Following: line 28
Insert:

Section 8. Section 41-3-445, MCA, is amended to read:
"41-3-445. Permanency hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate

reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) In any permanency hearing, the court or other entity conducting the hearing must consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

~~(4)~~(5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-

grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

~~(5)~~(6) The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

~~(6)~~(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection ~~(7)~~(8) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(7)~~(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444;

or

(d) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(8)~~(9) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

3. Renumber remaining sections accordingly.

-End-

